Writ Appeal No.115 of 2006

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Per G.S. Singhvi, CJ

This appeal is directed against order dated 23.1.2006 whereby the learned Single Judge declined to entertain the appellant's prayer for issuance of a mandamus to the respondents to decide the application filed by it for grant of quarry lease for black granite in an area of 3.00 hectares in Compartment No.213, Paradarami Reserve Forest, Chittoor West Division.

A perusal of the record show that the appellant submitted application dated 26th May, 2003 to the Assistant Director of Mines and Geology for grant of quarry lease in an area, which admittedly constitutes part of the reserve forest. The officer concerned forwarded the application to Divisional Forest Officer, West Division. The latter appears to have called upon the appellant to submit some documents. After about three months, Divisional Forest Officer, Chittoor Division, vide his communication dated 30.9.2003, called upon the appellant to submit application in accordance with the provisions of the Forest (Conservation) Rules, 2003 (for short "the Rules"), which have been framed by the Central Government in exercise of its power under sub-section (1) of Section 4 of the Forest (Conservation) Act, 1980 (for short 'the Act'). The appellant submitted fresh application on 5.11.2003 in Form-A prescribed under the Rules. The same was received by the competent authority on 6.11.2003. In the meanwhile, respondent No.7 made an application in Form-A on 29.8.2003 for grant of permission to carry out mining operation in an area, which forms part of the area for which application was made by the appellant. After processing both the applications, Principal Chief Conservator of Forests, Hyderabad vide his letter dated 28.6.2005 informed the appellant that its application cannot be considered because the Department has already recommended proposal of respondent No.7.

The appellant challenged the aforementioned communication in writ petition No.14986 of 2005 by contending that the application made by respondent No.7 could not have been entertained by the authorities of the Forest Department ignoring

the fact that it had already applied for grant of lease in the month of May, 2005. The appellant further pleaded that priority could not have been given to the application of respondent No.7, because the same was not submitted through proper channel.

The learned Single Judge after noticing the scheme of the rules, concluded that the application made by the appellant on 5.11.2003 could not have been given precedence over the application dated 29.8.2003 made by 7th respondent and once the competent authority had decided to recommend the application made by respondent No.7, the application made by the appellant could not be considered for the same area. The analysis of the relevant rules made by the learned single Judge and the reasons assigned by her for refusing to entertain the appellant's challenge to communication dated 28.6.2005 are reproduced below:

> "In exercise of the powers conferred by Section 4 of the said Act and in supersession of the earlier Rules made in the year 1981, new set of Rules were made in G.S.R. 23(E), dated 10.1.2003. The said Rules in detail prescribe the procedure for submission of the proposals seeking approval of the Central Government under Section 2 of the Act. As per Rule 6, every user agency, who wants to use any forest land for non-forest purposes, shall make its proposal in the appropriate form appended to the Rules to the concerned nodal officer authorized by the State Government along with the requisite information and documents, well in advance for taking up of any non-forest activity on the forest land. As per sub-rule (2) of Rule 6, every State Government after receiving the proposal from the user agency and after being satisfied that the proposal requires prior approval of the Central government under Section 2 of the Act, shall send the proposal to the Central Government in appropriate form within 90 days of the receipt of the proposal from the user agency. As per sub-rule (4) of Rule 6, such proposal involving the forest land up to forty hectares shall be sent to the Chief Conservator of Forests or Conservator of Forests of concerned Regional Office of the Ministry of Environment and Forests. Thereafter, after following the procedure prescribed under Rule 7, with regard to referring the proposal to the advisory committee constituted under Section 3 of the Act, the Central Government on the basis of the advice and after such further enquiry may grant approval or reject the proposal within sixty days of its receipt. It is not in dispute that the said Rules came into force with effect from 10.01.2003 and that the Principal Chief Conservator of Forests is the nodal officer authorized by the State Government. It is also clear from the Rules that the user agency i.e., any person making request for using the forest land for non-forest purposes shall make his proposal inform A, appended to the Rules, which is applicable for fresh applicant.

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It is also not in dispute that the underground mining is a non-forest activity, and therefore, prior approval of the Central Government is essential before a mining lease is granted under the Mines and Minerals (Development & Regulation) Act, 1957. Admittedly, when the petitioner made his application on 26.5.2003, the rules under the G.S.R.No.23(E) dated 10.01.2003 were already in force, and since the petitioner did not make his application in Form A, as appended to the Rules made under the said GSR dated 10.1.2003, he was informed by the 3rd respondent by letter dated 30.9.2003, to make the application in the prescribed Form A, furnishing all the necessary details and such an application was submitted by the petitioner only on 6.11.2003. However, the record discloses that much prior to that, the 7th respondent made an application in Form A on 29.8.2003. Hence the claim of the petitioner for priority over the application of the 7th respondent has no valid basis. May be that the petitioner submitted his application on 26.5.2003 to the Assistant Director of Mines and Geology, Chittoor, however, the same cannot be taken into consideration so far as clearance by the Government of India under the Act is concerned. The detailed counter-affidavit filed by the Chief Conservator of Forests as well as the material placed on record show that the applications made by both the petitioner and the 7th respondent were processed in accordance with law and they were registered at Sl.Nos.61 and 19 respectively. Hence, the stand taken by the respondents 1 to 6 in the impugned letter dated 28.6.2005 that the application of the petitioner could not be considered since the proposal made by the 7th respondent was already recommended, cannot be found fault with. The action of the respondents 1 to 6 is in accordance with the provisions of the Act as well as the Rules made thereunder, and therefore the interference by this Court is not warranted."

Learned counsel for the appellant assailed the order of the learned Single Judge and argued that in the absence of any provision in the Rules for giving priority to an application made prior in point of time, application dated 15.11.2003 made by his client could not have been overlooked simply because an earlier application made by respondent No.7 was being processed. Learned counsel emphasized that every application made for grant of permission to carry out mining operations in the reserve forest is required to be entertained and accepted by the competent authority subject to fulfilling the conditions laid down in the rules and the authorities of the

Forest Department committed grave illegality by refusing to entertain the appellant's application. He also invited our attention to Memo No.5624/FOR.I(1)2005-2, dated 1.9.2005 and argued that the application made by respondent No.7 directly to the Forest Department ought not to have been entertained ignoring the policy framed by the Government that every application made for mining operations in the reserve forest must be forwarded through the Department of Mines and Geology.

In our opinion, there is no merit in either of the contentions of the learned counsel. It is true that the scheme of the Rules does not envisage giving of priority to an application made prior in point of time, but the absence of such provision cannot made a ground for nullifying the decision of the forest department not to entertain the application of the appellant. In our view, once the department accepts the proposal made by one party for carrying out the mining operations in the reserve forest, another application made for undertaking mining operation in a part of the same area cannot be entertained.

The facts brought on record of the case show that the first application made by the appellant on 26.5.2003 was not in conformity with the rules, which require the making of application to the nodal authority in the prescribed form. The application dated 26.5.2003 was submitted by the appellant to the Assistant Director of Mines and Geology and not to the Nodal Officer. That apart, the same was not in the prescribed form. For the first time, application in the prescribed form was made to the competent authority on 5.11.2003 i.e. after more than two months of the application made by respondent No.7. Therefore, the action of the concerned authorities of the forest department in processing the application of respondent No.7 and making recommendation for grant of permission for mining operation cannot be dubbed as arbitrary.

The argument of the learned counsel that the application of respondent No.7 should not have been entertained because the same was not routed through the Mines and Geology Department is liable to be rejected because the policy, which is in the nature of executive instructions, cannot be applied with retrospective effect and the disposal of the applications made prior to 1.9.2005 cannot be regulated by that policy.

There is another reason for our disinclination to entertain the aforementioned

argument of the learned counsel. In the writ petition filed by it, the appellant did not question the entertaining of the application of respondent No.7 on the ground that the same had not been filed through the Mines and Geology Department. Not only this, no such argument is shown to have been raised before the learned Single Judge. Therefore, at this belated stage, we are unable to entertain the argument of the learned counsel that the application filed by respondent No.7 was not maintainable.

No other point has been argued.

For the reasons mentioned above, the appeal is dismissed.

G.S. SINGHVI, CJ

3rd February, 2006

G. BHAVANI PRASAD, J